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ARGENTINA PROJECT (S200000044)
U.S. DEPT. OF STATE, A/RPS/IPS
Margaret P. Grafeld, Director
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CINCSO FOR INTAFF

CINCLANT ALSO FOR POLAD

E.O. 12356: DECL:OADR
TAGS: SHUM, PGOV, AR
SUBJECT: TRIALS OF THE MILITARY IN ARGENTINA

REF: BUENOS AIRES 4306

1. SUMMARY: TRIALS OF MILITARY PERSONNEL (MOSTLY
RETIRED) CONTINUE IN MILITARY AND CIVIL COURTS, IN
VARIOUS PHASES, AND FOR VARIOUS CHARGES RANGING FROM
MILITARY INCOMPETENCE TO HUMAN-RIGHTS VIOLATIONS.
AT LEAST TEN OFFICERS, INCLUDING ALL THREE MEMBERS OF
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EX-PRESIDENT GALTIERI'S WARTIME JUNTA, ARE BEING TRIED

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BY THE SUPREME COUNCIL OF THE ARMED FORCES FOR THEIR PART IN THE FALKLANDS WAR. THE TRIALS ARE TAKING SO LONG, HOWEVER, THAT PRESIDENT ALFONSIN AND HUMAN-RIGHTS LEADERS HAVE PUBLICLY CRITICIZED THE SLOW PACE. THE POSSIBILITY OF ACTIVE-DUTY MILITARY OFFICERS BEING TRIED IN CIVIL COURTS IS A SOURCE OF CONTINUING CONCERN IN MILITARY RANKS AND IS A DELICATE ISSUE IN GOA-MILITARY RELATIONS. THE DEFENSE MINISTER HAS CASHIERED THE FIRST ARMY GENERAL TO BE STRIPPED OF HIS UNIFORM SINCE FORMER PRESIDENT JUAN PERON, FOR NOT APPEARING IN COURT. END SUMMARY.

2. (U) THE SUPREME COUNCIL OF THE ARMED FORCES

THERE ARE NOW AT LEAST TEN OFFICERS (MOSTLY RETIRED) "AT THE DISPOSAL OF" THE SUPREME COUNCIL OF THE ARMED FORCES FOR THEIR PART IN THE FALKLANDS/MALVINAS WAR, INCLUDING ALL THREE MEMBERS OF EX-PRESIDENT LEOPOLDO GALTIERI'S WARTIME JUNTA. "AT THE DISPOSAL OF" IS AN ARGENTINE TERM SIMILAR IN MEANING TO OUR "INDICTMENT." AFTER THE RATTENBACH REPORT ON THE WAR WAS ISSUED IN 1983, THE SUPREME COUNCIL BEGAN INVESTIGATING THE CHARGES MADE IN THAT REPORT AGAINST VARIOUS OFFICERS, SOME OF WHOM ARE TECHNICALLY LIABLE FOR THE DEATH PENALTY IF FOUND GUILTY. HUMAN-RIGHTS LEADERS CLAIM THE SUPREME COUNCIL HAS SHOWN FAR MORE INTEREST IN THE SOUTH ATLANTIC WAR THAN IN HUMAN-RIGHTS CASES, AND ON MAY 23 DEFENSE MINISTER RAUL BORRAS SUBMITTED TO PRESIDENT RAUL ALFONSIN A DRAFT DECREE AUTHORIZING THE SUPREME COUNCIL TO APPOINT MILITARY JUDGES TO AID IT IN HEARING HUMAN-RIGHTS-VIOLATIONS CASES AGAINST MILITARY PERSONNEL. THE GOA ALSO

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REPORTEDLY BELIEVES THAT THE NUMBER OF HUMAN-RIGHTS CASES THAT WILL RESULT FROM THE INVESTIGATIONS BY THE NATIONAL COMMISSION ON THE DISAPPEARANCE OF PERSONS WILL BE FAR TOO MANY FOR ANY SINGLE COURT TO HANDLE. ON MAY 29, FORMER PRESIDENT REYNALDO BIGNONE, THE RETIRED ARMY MAJOR GENERAL WHO SUCCEEDED GALTIERI IN 1982 AND LED THE COUNTRY TO THE GENERAL ELECTIONS OF 1983, WAS ALSO PLACED "AT THE DISPOSAL OF" THE SUPREME COUNCIL, WHICH IS INVESTIGATING HIS INVOLVEMENT IN A

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CASE INVOLVING THE ABDUCTION OF THREE CONSCRIPTS WHO LATER TURNED UP ALIVE. ON JUNE 7, ALFONSIN WAS QUOTED IN ARGENTINE NEWSPAPERS AS HAVING TOLD SPANISH WEEKLY "CAMBIO 16" IN AN INTERVIEW, "I DO NOT LIKE THE SLOWNESS OF MILITARY JUSTICE, BUT WE HAVE TO PROTECT THE RULE OF LAW."

3. [REDACTED] COURT JURISDICTION DISPUTE

POTENTIALLY, THE MOST EXPLOSIVE HUMAN-RIGHTS ISSUE PENDING IS THAT INVOLVING CIVIL VERSUS MILITARY-COURT JURISDICTION IN DISAPPEARANCE CASES. THE AMENDMENT TO THE CODE OF MILITARY JUSTICE PASSED BY CONGRESS IN EARLY 1984 PROVIDED FOR MILITARY TRIALS OF ALL MILITARY AND SECURITY PERSONNEL INVOLVED IN CRIMES RELATED TO SUPPRESSION OF SUBVERSION PRIOR TO MID-1982, SUBJECT TO FINAL APPEAL IN FEDERAL APPELLATE COURTS. SEVERAL JUDGES DECLARED THAT THE AMENDMENT TO THE CODE OF MILITARY JUSTICE IS UNCONSTITUTIONAL OR NOT APPLICABLE IN THE CASE OF DISAPPEARANCES BECAUSE, THEY ARGUE, THE CRIME OF DISAPPEARANCE CONTINUES FOR AS LONG AS THE PERSON DOES NOT REAPPEAR, LIKE KIDNAPPING. THUS, THE ARGUMENT GOES, CIVIL COURTS HAVE EXCLUSIVE JURISDICTION OVER SUCH CRIMES. ALTHOUGH THE

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SUPREME COURT IS EXPECTED EVENTUALLY TO RULE IN THE GOVERNMENT'S FAVOR, I.E., IN SUPPORT OF MILITARY-COURT JURISDICTION, THE OUTCOME IS FAR FROM CERTAIN. MOREOVER, EVENTUAL APPEALS TO CIVIL COURTS OF MANY DISAPPEARANCE OR OTHER HUMAN-RIGHTS VIOLATIONS CASES, WHICH MAY INVOLVE TESTIMONY BY ACTIVE-DUTY OFFICERS, CAN RESULT IN SITUATIONS THAT ARE VERY DELICATE FOR GOVERNMENT-ARMED

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FORCES RELATIONS. ON THE OTHER HAND, MILITARY JUSTICE CAN UNFOLD VERY SLOWLY. THUS, A SUPREME COURT DECISION IN FAVOR OF MILITARY-COURT JURISDICTION MAY ENSURE THAT SUCH CASES DO NOT ARRIVE IN CIVIL APPELLATE COURTS FOR YEARS.

1. (U) CIVIL COURTS

IN ADDITION TO THE CASES BEING HEARD BY THE ARMED FORCES SUPREME COUNCIL, THERE ARE MANY CASES BEING HEARD BY CIVILIAN JUDGES IN CIVIL COURTS, IN WHICH FORMER MILITARY PERSONNEL EITHER ARE BEING TRIED OR HAVE APPEARED TO TESTIFY. THOSE WHO HAVE APPEARED INCLUDE BIGNONE, FORMER FUNTA MEMBER AND RETIRED NAVY ADMIRAL RUBEN FRANCO, AND FORMER INTERIOR MINISTER AND RETIRED ARMY MAJOR GENERAL ALBANO HARGUINDEGUY. FORMER BUENOS AIRES MAYOR RETIRED AIR FORCE BRIGADIER GENERAL OSVALDO CACCIATORE WAS PUT UNDER PREVENTIVE ARREST ON MAY 23 BY A CIVILIAN JUDGE, WHO ALSO POSTED A U.S. \$77-MILLION ATTACHMENT ON CACCIATORE'S ASSETS AFTER FINDING HIM GUILTY PRIMA

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FACIE OF FRAUDULENT ADMINISTRATION WHILE SERVING AS
MAYOR.

5. (U) SENATE VERY SLOW IN APPROVING NEW JUDGES

YET ANOTHER PROBLEM THAT IS SLOWING DOWN THE CIVIL
JUDICIAL PROCESS IS THE SENATE'S SNAIL-LIKE PACE IN
APPROVING THE NEW JUDGES WHOSE NAMES HAVE BEEN
SUBMITTED BY THE EXECUTIVE BRANCH. THE APPROVAL
PROCESS HAS BEEN SO SLOW THAT IN MAY THE SUPREME
COURT SENT A LETTER TO THE PRESIDENT OF THE SENATE
EXPRESSING ITS CONCERN ABOUT THE DELAYS. ON JUNE 6,
THE SENATE RETURNED THE MESSAGE TO THE SUPREME COURT
[REDACTED]
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SINCE THE SENATE CONSIDERED THE COURT'S LANGUAGE
"UNACCEPTABLE."

5. COMMENT: THE CRUX OF THIS PROBLEM IS THE SENATE
APPROVALS COMMITTEE IS CONTROLLED BY THE PERONISTS
(5-4). MOREOVER, THAT COMMITTEE'S VICE CHAIRMAN IS
VICENTE SAADI, A LEFT-WING PERONIST WHO IS USING HIS
POSITION TO SEEK THE APPOINTMENT OF AS MANY PERONIST
JUDGES AND AMBASSADORS AS POSSIBLE. ONE OF HIS
BARGAINING TACTICS HAS BEEN TO HOLD UP APPROVAL OF
NON-PERONIST JUDGES AND AMBASSADORS IN ORDER TO GET
WHAT HE WANTS. OBSERVERS COMMENT, WITH THE BENEFIT OF
HINDSIGHT, THAT THE RADICALS MADE A BIG MISTAKE IN
LETTING THE PERONISTS HAVE CONTROL OF THIS KEY
COMMITTEE AND ARE NOW PAYING THE PRICE. END COMMENT.

7. (U) MILITARY REBELLION

ON MAY 24, FEDERAL PROSECUTOR ALBERTO PIOTTI UPHELD
CIVIL JURISDICTION OVER THE REBELLION CASE INVOLVING
THE THREE MILITARY COMMANDERS WHO OVERTHREW THE GOVERN-
MENT OF FORMER PRESIDENT MARIA ESTELA MARTINEZ DE PERON
IN MARCH 1976. THE DEFENSE LAWYERS OF RETIRED ARMY LT.
GENERAL JORGE VIDELA, RETIRED NAVY ADMIRAL EMILIO MASSERA,
AND RETIRED AIR FORCE BRIGADIER GENERAL ORLANDO AGOSTI
HAD ASKED THAT THE CASE BE TRANSFERRED TO MILITARY JURIS-
DICTION. PIOTTI'S DECISION WILL PROBABLY BE APPEALED TO
THE SUPREME COURT.

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8. (U) SUAREZ MASON CASHIERED

FORMER FIRST ARMY CORPS COMMANDER RETIRED MAJOR GENERAL

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CARLOS GUILLERMO SUAREZ MASON WAS CASHIERED IN EARLY
MAY BY DEFENSE MINISTER BORRAS FOR FAILING TO APPEAR IN
CIVIL AND MILITARY COURTS TO TESTIFY ON CHARGES OF
HUMAN-RIGHTS VIOLATIONS. SUAREZ MASON HAD ALLEGEDLY
SUPERVISED CLANDESTINE DETENTION CENTERS DURING THE SO-

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CALLED "DIRTY WAR" AGAINST SUBVERSION. HE IS THE FIRST
ARMY GENERAL TO BE STRIPPED OF HIS UNIFORM SINCE FORMER
[REDACTED]
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PRESIDENT JUAN PERON. (THERE IS INFORMED SPECULATION
THAT SUAREZ MASON HAS LEFT ARGENTINA AND MAY BE IN
THE UNITED STATES.)

9. (U) MRS. PERON TO APPEAR IN COURT?

RETIRED ARMY MAJOR GENERAL OSIRIS VILLEGAS, DEFENSE
ATTORNEY FOR RETIRED ARMY MAJOR GENERAL RAMON CAMPS,
FORMER CHIEF OF THE BUENOS AIRES PROVINCIAL POLICE,
HAS ASKED THE SUPREME COUNCIL OF THE ARMED FORCES TO
CALL UPON MRS. PERON TO GIVE TESTIMONY ABOUT HER
ORDERS THAT BEGAN THE MILITARY OFFENSIVE AGAINST
TERRORISTS, LEFTISTS, AND ANYONE THOUGHT TO HAVE
BEEN ACCOMPLICES. ACCORDING TO PRESS REPORTS, THE AIM
OF VILLEGAS' REQUEST IS TO PROVE THAT THE ARMED FORCES
AND GENERAL CAMPS WERE SIMPLY OBEYING THE EXPRESS
ORDERS OF A CONSTITUTIONAL PRESIDENT AND, THEREFORE,
SHOULD NOT BE BLAMED FOR CARRYING OUT THOSE ORDERS.

10. [REDACTED] COMMENT: MRS. PERON LIVES IN SPAIN AND
RARELY VISITS ARGENTINA. THE GOVERNMENT WOULD PREFER
THAT SHE NOT BE REQUIRED TO APPEAR IN COURT AND THERE
APPEARS TO BE LITTLE LIKELIHOOD THAT SHE WILL HAVE TO.

11. [REDACTED] AS REPORTED IN REFTTEL, MOST HUMAN-RIGHTS
LEADERS BELIEVE THE TRIALS OF THE MILITARY ARE TAKING
TOO LONG AND NOT ENOUGH MILITARY PERSONNEL ARE BEING
BROUGHT TO TRIAL. WE BELIEVE, HOWEVER, THAT A LARGE
MAJORITY OF THE ARGENTINE PUBLIC RECOGNIZES THE JUDICIAL
PROCESSING OF THESE CASES WILL TAKE TIME AND THE
ALFONSIN ADMINISTRATION IS MAKING A SINCERE EFFORT TO
SEE THAT JUSTICE IS DONE. ORTIZ
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